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## Chapter I. SHORT TITLE

These regulations shall be known and may be cited as the Flathead County Air Pollution Control Program.

## Chapter II. DECLARATION OF POLICY AND PURPOSE

It is hereby declared to be the public policy of ~~the~~ Flathead County, and the purpose of this Program, to preserve, protect, improve, achieve and maintain such levels of air quality of ~~the~~ Flathead County and the State of Montana, as will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the inhabitants of Flathead County, facilitate the enjoyment of the natural attractions of Flathead County, and promote the economic and social development of Flathead County. To this end, it is the purpose of this ~~program~~ Program to require the use of all available practicable methods to reduce, prevent and control air pollution in Flathead County. To prevent, abate or control air pollution in ~~the~~ Flathead County, the regulations contained herein are hereby established for Flathead County by the Board of Commissioners for Flathead County.

## Chapter III. AUTHORITIES FOR PROGRAM

(1) The authority to enact this Program ~~and these regulations contained herein~~ is provided in the Montana Code Annotated, Section 75-2-301.

(2) ~~Unless otherwise provided, the provisions of this~~ This ~~program~~ Program ~~shall~~ does not apply to air contaminant sources or classes of air contaminant sources ~~and operations~~ over which exclusive jurisdiction ~~and control~~ is retained by the Montana Board of ~~Health and Environmental Sciences~~ Review for the Montana Department of ~~Health and Environmental Sciences~~ Quality under provisions of the Montana Clean Air Act ~~of Montana~~ or the ~~findings and determinations of the~~ Montana Board of ~~Health and Environmental Sciences~~ Review at the time of approval of this ~~program~~ Program.

## Chapter IV. ADMINISTRATION

There is created a Flathead ~~City-County~~ Air Pollution Control Board, which shall be responsible for the administration of this Program. The Flathead City-County Board of Health shall be the Flathead ~~City-County~~ Air Pollution Control Board.

## Chapter V. CONTROL BOARD, MEETINGS-DUTIES-POWERS

(1) The ~~chairperson~~ Chairperson of the Board of Health or ~~their~~ his or her designee shall be the Chairperson of the Control Board.

(2) The Control Board shall hold meetings as necessary and keep minutes of its proceedings. Special meetings may be called by the Chairperson of the Control Board or upon request of two members of the Control Board.

(3) The Control Board may:

- (a) ~~Recommend~~ recommend to the Board of Commissioners of Flathead County the adoption, the amendment, or the repeal of any regulations necessary to implement ~~the provisions of~~ this Program;
- (b) ~~Hold~~ hold hearings related to any aspect of the Program, and compel the attendance of witnesses and the production of evidence at such hearings;
- (c) ~~Issue~~ issue orders necessary to effectuate the purpose of this Program, and enforce them by appropriate judicial or administrative proceedings;
- (d) ~~Instruct~~ instruct the Department to measure pollution levels and take samples of air pollution at designated sites;
- (e) ~~Instruct~~ instruct the Department to conduct surveys, investigation and research related to air contamination in Flathead County;
- (f) ~~Instruct~~ instruct the Department to collect and disseminate information and conduct educational and training programs related to prevention of air pollution;
- (g) ~~Adopt~~ adopt a schedule of fees required for permits and adopt administrative penalties under this Program;
- (h) ~~Hear~~ hear and decide appeals from decisions of the Department issuing, denying, suspending, revoking, amending, or modifying any permits required by this ~~program~~ Program or issuing notices of violation;
- (~~h~~) (i) ~~Establish~~ establish policy to be followed by the Department in implementing this Program; and
- (j) ~~Perform~~ perform any and all acts which may be necessary for the successful implementation of this Program.

#### Chapter VI. AIR QUALITY STAFF

There shall be an air quality staff within the Flathead City-County Health Department. This staff shall consist of such employees as deemed necessary by the Control Board.

(1) The Department shall employ personnel who shall possess such training and qualifications as are commensurate with the financial budget and the technical and administrative requirements of the Control Board.

(2) The Department's ~~Air Quality Staff~~ air quality staff, under the direction of the Control Officer or ~~their~~ his or her designated representative, shall:

- (a) issue, deny, ~~modify~~ amend, revoke, and suspend permits provided for or required under this ~~program~~ Program;
- (b) issue written notices of violation, ~~orders to take corrective action, and citations, and~~ and, by

appropriate administrative and judicial proceedings, enforce the provisions of this ~~program~~ Program;

(c) measure pollution levels and take samples of air pollution at designated sites in Flathead County; conduct investigative surveys; and research related to air ~~contaminant~~ contaminants in Flathead County; and collect and disseminate information and conduct educational and training programs related to the prevention of air pollution;

(d) accept, receive and administer grants or other funds from public or private agencies for the purpose of carrying out any provisions of the Program;

(e) provide necessary scientific, technical, administrative, and operational services to the Control Board;

(f) establish an inventory of sources of air pollution under the ~~programs~~ Program's jurisdiction within ~~in~~ the County;

~~(g) perform such other acts and functions designated by the Control Board for the successful implementation of this Program;~~

~~(h)~~(g) investigate complaints; ~~and~~

~~(H)~~(h) administer this ~~program~~ Program; ~~and~~

(i) perform such other acts and functions designated by the Control Board for the successful implementation of this Program.

## Chapter VII. INSPECTIONS

(1) Any duly authorized officer, employee, or other representative of the Control Board or the Department, upon the showing of identifying credentials, may enter and inspect any property except for a private residence, at any reasonable time, for investigating or testing any actual or suspected source of air pollution or ascertaining the state of compliance with this Program ~~and regulations in force pursuant thereto.~~

(2) No person ~~shall~~ may refuse entry or access to any authorized member or representative of the Control Board or Department, who requests entry for the purposes mentioned in section (1) or obstruct, hamper, or interfere in any manner with any such inspection.

## Chapter VIII. FLATHEAD COUNTY AIR POLLUTION CONTROL PLAN

~~Sub-Chapter~~ Subchapter 1 For the purposes of this ~~program~~ Program, the following definitions apply:

(1) "Air Contaminant" means dust, ash, fumes, gas, vapor, mist, smoke, odor, or any particulate matter or combination thereof present in the outdoor atmosphere.

(2) "Air Pollution" means the presence in the outdoor atmosphere of one or more air contaminants,

~~or any combination thereof~~ in sufficient quantities, and of such character and duration as is or is likely to be injurious to the health or welfare of ~~human~~ humans, ~~plant~~ plants, animal life, or property, or which will unreasonably interfere with the enjoyment of life or property or the conduct of business.

(3) "Air Pollution Control District" means the Flathead City-County Air Pollution Control District as defined by the area within the boundaries of Flathead County.

(4) "Ambient Air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(5) "Animal Matter" means any product or derivative of animal life.

(6) "Board of Health" means the Flathead City-County Board of Health.

(7) "Chairperson" means the ~~chairperson of the Board of Health and the Flathead City-County Air Pollution Control Board~~ Chairperson of the Board of Health or his or her designee.

(8) "Columbia Falls City-County Air Pollution Control District" means a special district within Flathead County defined by the area within the city limits of Columbia Falls and the extraterritorial area as shown in Appendix A and described in Appendix B.

(9) "Contingency Plan" means specific measures which would be implemented if a nonattainment ~~areas' area's State Implementation Plan~~ Control Plan fails to timely attain the National Ambient Air Quality Standards (NAAQS) or make reasonable further progress.

(10) "Control Board" means the Flathead City-County Board of Health.

(11) "Control Officer" means the Health Officer for the Flathead City-County Health Department, or any employee of the Department designated by the Health Officer.

(12) "Department" means the Flathead City-County Health Department.

(13) "Emission" means a release of an air contaminant into the outdoor atmosphere.

(14) "EPA" means the United ~~State~~ States Environmental Protection Agency.

(15) "Kalispell ~~City-County~~ City-County Air Pollution Control District" means a special air quality district within Flathead County defined as the area within the city limits of Kalispell and the extraterritorial area as shown in Appendix ~~A~~ C and described in Appendix ~~B~~ D.

(16) "Odor" means that property of an emission which stimulates the sense of smell.

(17) "Opacity" means the degree, expressed in percent, to which emissions reduce the transmission of light and obscure the view of an object in the background. Where the presence of uncombined water is the only reason for failure of an emission to meet ~~the~~ an applicable opacity limitation contained in this ~~chapter~~ Chapter, that limitation shall not apply. For the purpose of this ~~chapter~~ Chapter, opacity determination shall follow all requirements, procedures, specifications, and

guidelines contained in 40 CFR Part 60, ~~appendix~~ Appendix A, Method 9 (~~July 1, 1987 ed.~~) or by an in-stack transmissometer which complies with all requirements, procedures, specifications, and guidelines contained in 40 CFR Part 60, Appendix B, performance specification 1 (~~July 1, 1987 ed.~~).

(18) "Open Burning" means combustion of any material directly in the open air without a receptacle or in a receptacle other than a furnace, multiple chambered incinerator, or wood waste burner, with the exception of detonation of unexploded ordnance, small recreational fires, construction site heating devices used to warm workers, or safety flares used to dispose of dangerous gases at refineries, gas sweetening plants, or oil and gas wells.

(19) "Particulate Matter" means any material, except water in uncombined form, that is or has been airborne and exists as a liquid or a solid at standard conditions.

(20) "Person" means any individual, a partnership, a firm, an association, a municipality, public or ~~Private-private~~ Corporation corporation, the state or a subdivision or agency of the state, a trust, an estate, or any other legal entity and includes persons resident in Canada.

(21) "PM-10" means particulate matter with an aerodynamic diameter of less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 CFR Part 50, Appendix J, (~~52 FR 24664, July 1, 1987~~) and designated in accordance with 40 CFR Part 53 (~~52 FR 24727, July 1, 1987~~), or by an equivalent method designated in accordance with 40 CFR Part 53 (~~52 FR 24727, July 1, 1987~~).

(22) "Premises" means any property, piece of land, real estate, or building.

(23) "Public Nuisance" means any condition which endangers health or safety, is offensive to the senses or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood or by any considerable number of persons.

(24) "Salvage Operation" means any operation conducted in whole or in part for the salvaging or reclaiming of any product or material, except the silvicultural practice commonly referred to as a salvage cut.

(25) "Source" means any property, real or personal, or person contributing to air pollution.

(26) "State Implementation Plan or SIP" means the emission control plan for the State of Montana that is required by the Federal Clean Air Act including ~~state-wide~~ statewide and ~~area~~ area-specific provisions.

(27) "Stack or Chimney" means any flue, conduit, or duct arranged to conduct emissions.

(28) "Trade Waste" means solid, liquid, or gaseous material resulting from construction or the operation of any business, trade, industry, or demolition operation including but not limited to wood, wood products, plastic, cartons, grease, oil, chemicals, and cinders.

(29) "Whitefish City/-County Air Pollution Control District" means a special air quality district within Flathead County defined as the area within the city limits of ~~Kalispell~~ Whitefish and the

extraterritorial area as shown in Appendix ~~C~~ E and described in Appendix ~~D~~ F.

(30) “Wood-Waste Burners”~~:-~~ means ~~Devices~~ devices commonly called tepee burners, silos, truncated cones, wigwam burners, and other such burners commonly used by the wood products industry for the disposal or burning of wood wastes.

## Sub-Chapter Subchapter 2 Open Burning

### Rule 201 Definitions

For the purpose of the open burning ~~sub-chapter~~ subchapter the following definitions apply:

(1) "Best Available Control Technology" (BACT) means those techniques and methods of controlling emissions of pollutants from an existing or proposed open burning source which limit those emissions to the maximum degree to which the ~~department~~ Department determines, on a case-by-case basis, is achievable for that source, taking into consideration impacts on energy use, the environment, and the economy, and any other costs, including the cost to the source.

(a) Such techniques and methods may include the following:

(i) scheduling of burning during periods and seasons of good ventilation<sub>;</sub>

(ii) applying dispersion forecasts<sub>;</sub>

(iii) utilizing predictive modeling results performed by and available from the ~~department~~ Department to minimize smoke impacts<sub>;</sub>

(iv) limiting the amount of burning to be performed during any one period of time<sub>;</sub>

(v) using ignition and burning techniques which minimize smoke production<sub>;</sub>

(vi) selecting fuel preparation methods that will minimize dirt and moisture content<sub>;</sub>

(vii) promoting fuel configurations which create an adequate air to fuel ratio<sub>;</sub>

(viii) prioritizing burns as to air quality impact and assigning control techniques accordingly<sub>;</sub> and

(ix) promoting alternative treatments and uses of materials to be burned.

(b) In the case of essential agricultural open burning, ~~during September or October, or~~ prescribed wildland open burning, conditional air quality open burning, Christmas tree waste open burning, or any other minor open burning during September, October, or November, BACT includes burning only during the time periods specified by the ~~department~~ Department.

(c) In the case of prescribed wildland open burning during December, January, and February, BACT includes burning during the times specified by the ~~department~~ Department.

(2) "Christmas tree waste" means wood waste from commercially grown Christmas trees left in the field where the trees were grown, after harvesting and on-site processing.

(2) (3) "Essential Agricultural Open Burning" means any open burning conducted on a farm or ranch for the purpose of:

- (a) ~~Eliminating~~ eliminating excess vegetative matter from an irrigation ditch ~~where~~ when no reasonable alternative method of disposal is available;
- (b) ~~Eliminating~~ eliminating excess vegetative matter from cultivated fields ~~where~~ when no reasonable alternative method of disposal is available;
- (c) ~~Improving~~ improving range conditions when no reasonable method of disposal is available; or
- (d) ~~Improving~~ improving wildlife habitat when no reasonable alternative method is available.

(3) (4) "Major Open Burning Source" ~~means~~ means ~~Any~~ any person, agency, institution, business, or industry conducting any open burning within Flathead County which on a countywide basis will burn more than 100 acres of forestry slash or emit more than 500 tons per calendar year of carbon monoxide or 50 tons per calendar year of any other pollutant regulated by ~~Chapter 16~~ Title 17, Chapter 8 of the Administrative Rules of Montana.

(4) (5) "Minor Open Burning Source" ~~means~~ means ~~Any~~ any person, agency, institution, business, or industry conducting open burning which is not a major open burning source.

(5) (6) "Prescribed wildland open burning" means any planned open burning, either deliberately or naturally ignited, that is conducted on forest land or relatively undeveloped rangeland to:

- (a) improve wildlife habitat;
- (b) improve range conditions;
- (c) promote forest regeneration;
- (d) reduce fire hazards resulting from forestry practices, including reduction of log deck debris when the log deck is close to a timber harvest site;
- (e) control forest pests and diseases; or
- (f) promote any other accepted silvicultural practices.

#### Rule 202 Materials Prohibited

(1) The Control Board hereby adopts and incorporates by reference 40 Code of Federal Regulations (CFR) Part 261, which identifies and defines hazardous wastes.

(2) The following material may not be disposed of by open burning:

- (a) ~~Any~~ any wastes which are moved from the premises where ~~it was~~ they were generated,

including ~~that~~ those moved to a solid waste disposal site, except as provided for in ~~Sub-~~  
~~chapter~~ Subchapter 2, Rule 207, Rule 208, and Rule 209;

(b) ~~Food~~ food wastes;

(c) ~~Styrofoam~~ styrofoam and other plastics;

(d) ~~Wastes~~ wastes generating noxious odors;

(e) ~~Wood~~ wood and wood by-products other than trade wastes unless a public or private  
garbage hauler, or rural container system is unavailable;

(f) ~~Poultry~~ poultry litter;

(g) ~~Animal~~ animal droppings;

(h) ~~Dead~~ dead animals or dead animal parts;

(i) ~~Tires~~ tires;

(j) ~~Rubber~~ rubber materials;

(k) ~~Asphalt~~ asphalt shingles, except as provided in ~~Sub-chapter~~ Subchapter 2, Rule 206;

(l) ~~Tar~~ tar paper, except as provided in ~~Sub-chapter~~ Subchapter 2, Rule 206;

(m) ~~Automobile~~ automobile or aircraft bodies and interiors;

(n) ~~Insulated~~ insulated wire, except as provided in ~~Sub-chapter~~ Subchapter 2, Rule 206;

(o) ~~Oil~~ oil and petroleum products, except as provided in ~~Sub-chapter~~ Subchapter 2, Rule  
206;

(p) ~~Treated~~ treated lumber and timbers;

(q) ~~Pathogenic~~ pathogenic wastes;

(r) ~~Hazardous~~ hazardous wastes as defined by 40 CFR Part 261;

(s) ~~Trade~~ trade wastes, except as provided in ~~Sub-chapter~~ Subchapter 2; Rule 207, Rule  
208, and Rule 209;

(t) ~~Any~~ any materials resulting from a salvage operation; and

(u) ~~Chemicals~~ chemicals.

(v) Christmas tree waste as defined in Subchapter 2, Rule 201 except as provided in  
Subchapter 2, Rule 207;

- (w) asbestos and asbestos-containing materials;
- (x) standing or demolished structures containing prohibited materials, except as provided in Subchapter 2, Rule 206
- (y) paint, except as provided in Subchapter 2, Rule 206.

### Rule 203 Minor Open Burning Source Requirements

Unless required to obtain an open burning permit under another rule in this subchapter, a minor open burning source need not obtain an air quality open burning permit, but must:

- (1) conform with BACT;
- ~~(1)~~ (2) ~~Comply comply~~ with all rules within this ~~sub-chapter~~ Subchapter and burn only clean, dry material-;
- ~~(2)~~ (3) ~~Comply comply~~ with restrictions and times specified by the Montana State Airshed Group monitoring unit for major open burning sources or the ~~department~~ Department when the Montana State Airshed Group monitoring unit is not in operation-;
- ~~(3)~~ (4) ~~Comply comply~~ with any requirements or regulations relating to open burning established by any public agency responsible for protecting public health and welfare, or which is responsible for fire prevention or control-;
- ~~(4)~~ (5) ~~If if~~ it desires to conduct essential agricultural open burning ~~during September or October~~ or prescribed wildland open burning during September, October, or November, adhere to the time periods set by the Department-; and
- ~~(5)~~ (6) ~~If if~~ it desires to conduct prescribed wildland open burning during December, January, or February, request permission in writing stating why the open burning must be conducted prior to reopening in March, obtaining permission for each burn and adhere to the time ~~period~~ periods set by the Department.

### Rule 204 Major Open Burning Source Requirements

(1) Major open burning sources need not apply for and obtain an air quality open burning permit from the ~~department~~ Department if the source has obtained a permit from the Montana Department of ~~Health and Environmental Sciences (DHES)~~ Quality (DEQ), Air Resources Management Bureau, pursuant to ARM ~~16.8.1304 (1989)~~ 17.8.610 and where no other provision of these regulations is violated. A permit issued by ~~DHES~~ DEQ to burn ~~will be~~ is valid in Flathead County only when the Montana State Airshed Group monitoring unit is in operation.

(2) Major open burning sources issued a permit pursuant to ARM ~~16.8.1304 (1989)~~ 17.8.610 shall ~~be required to~~ apply for and obtain a permit from the ~~department~~ Department when the Montana State Airshed Group monitoring unit is not in operation and shall adhere to the conditions

of the permit. The application for permit must be accompanied by the appropriate air quality permit application fee required by the Control Board and must contain the following information:

(a) a legal description of each planned site of open burning or a detailed map showing the location of each planned site of open burning;

(b) the elevation of each planned site of open burning;

(c) the method of burning to be used at each planned site of open burning; and

(d) the average fuel loading or total fuel loading at each site to be burned.

(3) The applicant for a major open burning permit shall notify the public of its application for a permit by means of legal publication in a newspaper of general circulation in the area affected by the application. The notice shall be made not sooner than 10 days prior to submittal of an application and not later than 10 days after submittal of an application. Form of the notice shall be provided by the Department and shall include a statement that public comments may be submitted to the Department concerning the application within 20 days after publication of the notice or filing of the application, whichever is later.

(4) The Department's decision to approve or deny an application for a major open burning permit shall be posted at the Department for 15 working days.

(5) A person who is adversely affected by the Department's final decision may request a hearing before the Control Board within 15 days after the Department's final decision. The request must be made in writing. The request for hearing must state specific grounds why the permit should not be issued or why it should be issued with particular conditions and why the complainant is adversely affected. The Control Board shall conduct a hearing within 30 days after receipt of such request upon due notice to the applicant, the person requesting the hearing and to the public. Within 10 days following the hearing the Control Board shall instruct the Department to issue, issue with conditions, or deny the conditional air quality open burning permit.

(6) The filing of a request for a hearing postpones the effective date of the Department's decision until the conclusion of the hearing and the issuance of the final decision by the Control Board.

(7) A major open burning source must:

(a) conform with BACT; and

(b) comply with the conditions in any air quality open burning permit issued to it by the department, which will be in effect for one year from its date of issuance or another time frame as specified in the permit by the department.

(8) To open burn in a manner other than that described in the application for an air quality open burning permit, the source must submit to the department, in writing or by telephone, a request for a change in the permit, including the information required by (1), and must receive approval from the department.

## Rule 205 Special Open Burning Periods

- (1) Prescribed wildland open burning, open burning performed to train fire fighters under ~~Chapter IX Subchapter 2, Rule 206, and~~ open burning authorized under the emergency open burning permit ~~provision set forth in provisions of Chapter IX Subchapter 2, Rule 209, and for the purpose of thawing frozen ground to allow excavation of utilities~~ may be conducted during the entire year.
- (2) Open burning other than those categories listed in Section 1 above may be conducted only during the months of March through ~~October~~ November.

## Rule 206 Fire Fighters' Training

~~Asphalt shingles, tar paper, or insulated wire which is part of a building, and oil or petroleum products may be burned for the purpose of training fire fighters, if the fire is restricted to a building or structure or a permanent training facility, in a site other than a solid waste disposal site, and if the material to be burned is not allowed to smolder after the training session has terminated, and no public nuisance is created. A permit must be obtained from the department prior to each burn unless the training occurs at a permanent training facility.~~

(1) The Department may issue an air quality open burning permit for open burning of asphalt shingles, tar paper, or insulated wire which is part of a building or standing structure, oil or petroleum products, and automobile or aircraft bodies and interiors, for training firefighters, if:

(a) the fire will be restricted to a building or structure, a permanent training facility, or other appropriate training site, in a site other than a solid waste disposal site;

(b) the material to be burned will not be allowed to smolder after the training session has terminated, and no public nuisance will be created;

(c) all asbestos-containing material has been removed;

(d) asphalt shingles, flooring material, siding, and insulation which might contain asbestos have been removed, unless samples have been analyzed by a certified laboratory and shown to be asbestos-free;

(e) all prohibited material that can be removed safely and reasonably has been removed;

(f) the open burning accomplishes a legitimate training need;

(g) clear educational objectives have been identified for the training;

(h) burning is limited to that necessary to accomplish the educational objectives;

(i) the training operations and procedures are consistent with nationally accepted standards of good practice; and

(j) emissions from open burning will not endanger public health or welfare or cause or contribute to a violation of any Montana or federal ambient air quality standard.

(2) The department may place any reasonable requirements in an air quality firefighter training open burning permit that the department determines will reduce emissions of air pollutants or will minimize the impact of emissions, and the recipient of a permit must adhere to those conditions.

(3) The applicant may be required, prior to each burn, to notify the Department of the anticipated date and location of the proposed training exercise and the type and amount of material to be burned. The Department may be notified by phone, fax, or in writing.

(4) An application for an air quality firefighter training open burning permit must be made on a form provided by the Department. The applicant must provide adequate information to enable the department to determine whether the application satisfies the requirements of this rule for a permit.

(5) The applicant for a major open burning permit shall notify the public of its application for a permit by means of legal publication in a newspaper of general circulation in the area affected by the application. The notice shall be made not sooner than 10 days prior to submittal of an application and not later than 10 days after submittal of an application. Form of the notice shall be provided by the Department and shall include a statement that public comments may be submitted to the Department concerning the application within 20 days after publication of the notice or filing of the application, whichever is later.

(6) The Department's decision shall be posted at the Department for 15 working days.

(7) A person who is adversely affected by the Department's final decision may request a hearing before the Control Board within the 15 working day. The request must be made in writing. The request for hearing must state specific grounds why the permit should be issued, why it should not be issued or why it should be issued with particular conditions and why the person is adversely affected. The Control Board shall conduct a hearing within 30 days after receipt of such request upon due notice to the applicant, the person requesting the hearing and to the public. Within 10 days following the hearing the Control Board shall instruct the Department to issue, issue with conditions, or deny the conditional air quality open burning permit.

(8) The filing of a request for a hearing postpones the effective date of the Department's decision until the conclusion of the hearing and the issuance of the final decision by the Control Board.

#### Rule 207 Open Burning Disposal of Christmas tree Waste

(1) The Department may issue an open burning permit to dispose of waste accumulated from the normal operation of Christmas tree farms if:

(a) ~~The~~ the wastes are generated on the owner or operator's property and not generated from another source; and

(b) ~~Open open burning constitutes the~~ conforms with BACT; and

(c) ~~Emissions~~ emissions from such open burning would not endanger public health and welfare or cause or contribute to a violation of any Montana or Federal ambient air quality standard.

(2) The Department may place any reasonable ~~requirements~~ conditions in the open burning permit that it determines will reduce emissions of air pollutants or will minimize the impact of ~~said~~ emissions, and the recipient of ~~such~~ a permit must adhere to those conditions. ~~In the case of a permit granted pursuant to Section (1) above:~~

(a) BACT for the period covered by the permit shall be set out ~~within the conditions of in~~ the permit; and

(b) ~~with the a provision that~~ the source may be required, prior to each burn, to receive approval from the Department of the date and time of the proposed burn to ensure that good ventilation exists and to assign priorities if necessary. Approval ~~will~~ may be obtained requested by calling the Department.

(3) The applicant for this type of permit shall notify the public of its application by posting a public notice provided by the Department on the property where the open burn is to occur and a public notice at the Department. ~~The property~~ Posting shall be made near the closest public right-of-way to the property and be clearly visible. The posted sign is to convey the information supplied on the application. The notice shall remain on the property in a visible condition for a period of 15 days. The notice shall include a statement that public comments may be submitted to the Department during the time period specified on the public notice.

(4) The Department's decision ~~to approve or deny an application for this type of open burning permit~~ shall be posted at the Department for 15 ~~three~~ working days. ~~The Departments Department's decision may be reviewed by the Control Board in accordance with the following provisions:~~

(5) A person who is adversely affected by the Department's decision may request a hearing before the Control Board within the 15 working days. The request must be made in writing. The request for hearing must state specific grounds why the permit should be issued, why it should not be issued or why it should be issued with particular conditions and why the person is adversely affected. The Control Board shall conduct a hearing within 30 days after receipt of such request upon due notice to the applicant, the person requesting the hearing and to the public. Within 10 days following the hearing the Control Board shall instruct the Department to issue, issue with conditions, or deny the conditional air quality open burning permit.

(6) a) The filing of a request for a hearing postpones the effective date of the Department's decision until the conclusion of the hearing and the issuance of the final decision by the Control Board.

#### Rule 208 Conditional Air Quality Open Burning Permits

(1) The Department may issue a conditional air quality open burning permit for the disposal of:

(a) ~~Wood~~ solid wood and wood by-product trade wastes by any business, trade, industry, or demolition project ~~it is determined~~ or untreated wood waste at a licensed landfill if the Department determines that:

~~(i)~~ (i) Open open burning will conform with ~~constitutes~~ the BACT; and

~~(ii)~~ Emissions emissions from such open burning would not endanger public health and welfare or cause a violation of any Montana or Federal ambient air quality standards; ;

~~(b) Untreated untreated wood waste at a licensed landfill site if the Department determines that:~~

~~(i)~~ (iii) alternative methods of disposal would result in extreme economic hardship to the applicant solid waste management system owner or operator; and

~~(ii) emissions from such air quality open burning would not endanger public health or welfare or cause a violation of any Montana or Federal ambient air quality standard; and~~

~~(iii)~~ (iv) prior to issuance of a conditional air quality open burning permit, the wood waste pile is inspected by the Department and no prohibited materials listed in ARM 16.8.1302 Subchapter 2, Rule 202, other than wood wastes, are present; and

(v) in the case of material to be burned at a licensed landfill, the material must comply with and be burned at an approved burn site as designated in the solid waste management system license issued by the Department of Environmental Quality pursuant to ARM Title 17, Chapter 50, Subchapter 5.

(2) A conditional air quality open burning permit issued under this rule is valid for the following periods:

(a) ~~Wood~~ wood and wood by-product trade waste - one calendar year; and

~~(b) Untreated untreated wood wastes at licensed landfill sites – one year. single burn. A new permit must be obtained for each burn.~~

(3) The Department may place any reasonable requirements in a conditional air quality open burning permit that it determines will reduce emissions of air pollutants or will minimize the impact of ~~said~~ emissions, and the recipient of ~~such~~ a permit must adhere to those conditions. In the case of a permit granted pursuant this rule, to section (1) (a) above, BACT for the year covered by the permit will be set out within ~~the conditions of~~ the permit, with the provision that the source may be required, prior to each burn, to receive approval from the Department of the date of the proposed burn to ensure that good ventilation exists and to assign priorities if necessary. Approval may be ~~obtained requested~~ by calling the Department.

(4) An application for a conditional air quality open burning permit must be made on a form provided by the Department. The applicant must provide adequate information to enable the

~~department~~ Department to determine that the application satisfies the requirements for a conditional air quality open burning permit contained in this rule. Proof of publication of public notice, as required in Section (5) of this rule, shall be submitted as part of any application.

(5) The applicant for a conditional air quality open burning permit shall notify the public of its application for a permit by means of legal publication in a newspaper of general circulation in the area affected by the application. The notice shall be made not sooner than 10 days prior to submittal of an application and not later than 10 days after submittal of an application. Form of the notice shall be provided by the Department and shall include a statement that public comments may be submitted to the Department concerning the application within 20 days after publication of the notice or filing of the application, whichever is later.

(6) A conditional air quality open burning permit granted pursuant to this rule ~~section (1) (a) above~~ is a temporary measure to allow time for an entity generating the trade wastes to develop alternative means of disposal.

(7) The Department's decision ~~to approve or deny an application for a conditional air quality open burning permit~~ shall be posted at the Department for 15 ~~three~~ working days. The Department's decision may be reviewed by the Control Board in accordance with the following provisions:

~~(a)~~ (8) A person ~~who has submitted written comments and~~ who is adversely affected by the Department's final decision may request a hearing before the Control Board within the 15 3 working days after the Department's final decision. The request must be made in writing. The request for hearing must state specific grounds why the permit should be issued, why the permit should not be issued or why it should be issued with particular conditions and why the complainant is adversely affected. ~~The Control Officer shall determine, within 10 days, if a hearing need be held by the Control Board. If the Control Officer determines no hearing need be held, the decision of the Department is affirmed, and said officer shall notify the complainant of the action.~~ The Control Board may conduct a hearing within 30 days after receipt of such request upon due notice to the applicant, the person requesting the hearing and to the public. Within 10 days following the hearing the Control Board shall instruct the Department to issue, issue with conditions, or deny the conditional air quality open burning permit;and

~~(b)~~ (9) The filing of a request for a hearing postpones the effective date of the ~~department's~~ Department's decision until the conclusion of the hearing and the issuance of the final decision by the Control Board.

#### Rule 209 Emergency Air Quality Open Burning Permits

(1) The Department may issue an emergency air quality open burning permit to allow the burning of a substance not otherwise approved for burning under this ~~sub-chapter~~ subchapter if the applicant demonstrates that the substance poses an immediate threat to public health and safety, or plant or animal life, and that no alternative method of disposal is reasonably available.

(2) Application for such a permit may be made to the Department ~~by telephone or~~ in writing and must include:

(a) ~~Evidence~~ facts why alternative methods of disposal of the substance are not reasonably

available-;

(b) ~~Facts~~ facts establishing that the substance to be burned poses an immediate threat to human health and safety or plant or animal life if not disposed of by burning-;

(c) ~~The~~ the legal description or address of the site where the burn will occur-;

(d) ~~The~~ the amount of material to be burned-;

(e) ~~The~~ the date and time of the proposed burn; and

(f) the date and time of the incident causing the emergency.

#### Rule 210 Permit Fees

(1) The Control Board shall establish a fee schedule for the issuance of air quality open burning permits and the inspection of open burning sites. Such fees will be based on the cost associated with conducting the service.

(2) All fees collected shall be deposited in the Flathead City-County Health fund.

#### ~~Sub-Chapter~~ Subchapter 3 Voluntary Solid Fuel Burning Device Curtailment Program

It is intent of this ~~program~~ Program to establish guidelines which may be utilized to control emissions of air contaminants from solid fuel burning devices in order to further the policy and purpose declared in Chapter II.

(1) For the purpose of this ~~rule~~ Subchapter, the following definition applies:

(a) "Air Pollution Alert" means a period when the PM-10 (or comparable PM-2.5) levels exceed or are expected to exceed 100 micrograms per cubic meter (or comparable PM-2.5 standard) as measured with a ~~tapered element oscillating microbalance (TEOM) or other Department approved monitoring device~~ Department of Environmental Quality accepted air pollution monitoring device.

(2) Within the Air Pollution Control District, a voluntary curtailment program for solid fuel burning devices will be initiated by January 1, 1992.

(3) It is the ~~Departments~~ Department's duty, when declaring an Air Pollution Alert, to take reasonable steps to inform the public that curtailment of burning in a solid fuel combustion device may reduce pollution and benefit overall air quality.

#### ~~Sub-Chapter~~ Subchapter 4 Prohibited Materials for Wood or Coal Residential (Solid Fuel Burning Device) Stoves

#### Rule 401 Materials Prohibited

(1) No person may cause or authorize ~~the use of~~ the following materials to be combusted in any

residential solid-fuel combustion device such as a wood, coal, or pellet stove, or fireplace:

- (a) ~~Feed~~ food wastes;
- (b) ~~Styrofoam~~ styrofoam and other plastics;
- (c) ~~Wastes~~ wastes generating noxious odors;
- (d) ~~Poultry~~ poultry litter;
- (e) ~~Animal~~ animal droppings;
- (f) ~~Dead~~ dead animals or dead animal parts;
- (g) ~~Tires~~ tires;
- (h) ~~Asphalt~~ asphalt shingles;
- (i) ~~Tarpaper~~ tarpaper;
- (j) ~~Insulated~~ insulated wire;
- (k) ~~Treated~~ treated lumber or timbers including railroad ties;
- (l) ~~Pathogenic~~ pathogenic wastes;
- (m) ~~Colored~~ colored newspaper or magazine print;
- (n) ~~Hazardous~~ hazardous wastes as defined by 40 CFR Part 261; or
- (o) ~~Chemicals~~ chemicals.

#### ~~Sub-Chapter 5~~ Subchapter 5 Kalispell City-County Air Pollution Control District

It is the intent of this rule to establish a control plan which will provide protection to the residents of the City of Kalispell from air pollution levels in excess of the state and federal ambient air quality PM-10 standards. The provisions of this ~~Sub-chapter~~ Subchapter apply only to the Kalispell City-County Air Pollution Control District.

#### Rule 501 Materials To Be Used on Roads and Parking Lots-Standards

(1) For the purpose of this rule, the following definitions apply:

- (a) "Parking Lot" means a parcel of land located off of the public right-of-way not less than 5000 square feet in size which is primarily used for the temporary storage of motor vehicles.
- (b) "Road" means any road, street, or alley which is greater than 50 feet in length, and has a

projected traffic volume greater than 50 vehicles per day.

(2) Within the Kalispell City-County Air Pollution Control District, no person ~~shall~~ may place any sanding or chip seal material upon any road or parking lot ~~that which has a durability, as defined by the Montana Modified L.A. Abrasion test of greater than or equal to 7 or other testing method which approved by the Control Board deems suitable, of greater than or equal to 7 and has a content of material smaller than 200 mesh, as determined by standard wet sieving methods, which exceeds 3.0% oven dry weight. AASHTO T-210, LA Abrasion Test (ASTM C-131), and ASTM C-131, that does not meet the following standards:~~

- A durability index of greater than or equal to 40
- Abrasion factor not to exceed 20%
- Not more than 3% of the material passing a 200 screen on sieve analysis

The Board may approve other testing methods that in its opinion meet the ~~statutory~~ and regulatory standards and accomplish the purpose of this rule.

(3) ~~It shall be the responsibility of the~~ Prior to application , the person applying the sanding or chip seal material ~~to shall~~ test the material and provide the ~~department~~ Department representative data demonstrating that the material meets the specifications listed in Section (2) ~~prior to application~~. Such data shall be obtained by gathering a representative sample from the stockpile of the material as it is produced and analyzing the material in accordance with the methods identified in Section (2).

#### Rule 502 Construction and Demolition Activity

(1) For the purpose of this rule, the following definitions apply:

(a) "Construction/demolition activity" means any on-site mechanical activity preparatory to or related to building, alteration, maintenance, or demolition of an improvement on real property including, but not limited to: grading, excavation, filling, transport and mixing of material, loading, crushing, cutting, planing, shaping, breaking, sandblasting, or spraying.

(b) "Exempt activity" means any construction/demolition activity consisting of:

(i) ~~A~~ a building or improvement with a combined floor space of less than 4000 square feet; ~~;~~ or

(ii) ~~A~~ a disturbed surface area of less than 4000 square feet.

(iii) Agricultural activities as defined by 76-2-902, Montana Code Annotated.

(c) "Reasonably Available Control Technology" (RACT)" means techniques used to prevent the emission and/or the airborne transport of dust and dirt from a construction/demolition site including: application of water or other liquid, limiting access to the site, securing loads, enclosing, shrouding, compacting, stabilizing, planting vegetative cover, cleaning vehicles as they leave the site, scheduling projects for optimum meteorological conditions, or other such measures the ~~department~~ Department may specify

to accomplish satisfactory results.

(2) No person ~~shall~~ may engage in any construction/demolition activity, except for exempt activities, without first applying for and obtaining a permit, which describes the project and contains a dust control plan which constitutes RACT, from the ~~department~~ Department.

(3) An application for a construction/demolition permit must be made on a form provided by the ~~department~~ Department. The applicant must provide adequate information to enable the ~~department~~ Department to determine that the application satisfies the requirements for a construction/demolition permit contained in this rule. Proof of publication of public notice, as required in Section (4) of this rule, shall be submitted as part of any application.

(4) The applicant for a construction/demolition permit shall notify the public of its application for a permit by means of legal publication in a newspaper of general circulation in the area affected by the application. The notice shall be made not sooner than 10 days prior to submittal of an application and not later than 10 days after submittal of an application. Form of the notice shall be provided by the Department and shall include a statement that public comments may be submitted to the Department concerning the application within 20 days after publication of the notice or filing of the application, whichever is later. It is the responsibility of the applicant to pay all costs associated with publication.

(5) The Department's decision ~~to approve or deny an application for a construction/demolition permit shall be posted at the Department for three 15 working days. The Departments decision may be reviewed by the Board in accordance with the following provisions:~~

(a) ~~(6)~~ A person who ~~has submitted written comments and who~~ is adversely affected by the Department's final decision may request a hearing before the Control Board within ~~the 3 15 working~~ days after the Department's ~~final~~ decision. The request must be made in writing. The request for hearing must state specific grounds why the permit should be issued, why the permit should not be issued or why it should be issued with particular conditions and why the complainant is adversely affected. ~~The Control Officer shall determine, within 10 days, if a hearing need be held by the Control Board. If the Control Officer determines no hearing need be held, the decision of the Department is affirmed, and said officer shall notify the complainant of the action.~~ The Control Board ~~may~~ shall conduct a hearing within 30 days after receipt of such request upon due notice to the applicant and to the public. Within 10 days following the hearing the Control Board shall instruct the Department to issue, issue with conditions, or deny the construction/demolition permit; and

~~(b)~~ (7) The filing of a request for a hearing postpones the effective date of the ~~department's~~ Department's decision until the conclusion of the hearing and the issuance of the final decision by the Control Board.

~~(6)~~ (8) The Department shall deny an application for a construction/demolition permit unless:

(a) ~~in the opinion of the~~ The department Department; determines that RACT is will be employed; and

(b) prior written approval ~~had~~ has been obtained from the Kalispell Building Department.

### Rule 503 Pavement of Roads Required

(1) For the purpose of this rule, the following definitions apply:

- (a) "Compliance plan" means an owner-submitted written plan and schedule of implementation to improve an unpaved road by routine application of dust suppressants, or other effective measure to control fugitive dust until the road is paved.
- (b) "Existing street or road" means any street, road, or alley which is greater than 50 feet in length, has an average traffic volume greater than 200 vehicles per day, and was in existence on January 1, ~~1990~~ 2008.
- (c) "New street or road" means any street, road, or alley which is greater than 50 feet in length, has a projected average traffic volume greater than 50 vehicles per day, and on which construction commenced or will commence after January 1, ~~1990~~ 2008.

(2) Within the Kalispell City-County Air Pollution Control District, no person ~~shall~~ may allow the construction of a new street or road unless it is paved.

(3) Within the Kalispell City-County Air Pollution Control District, no person ~~shall~~ may allow the operation, use, or maintenance of any unpaved existing street or road unless a compliance plan has been filed with and approved by the Department. A compliance plan must be filed with the Department within 60 days of written notification that paving is required. The Department may approve a compliance plan as submitted or amend the plan to include any additional reasonable dust control measures.

(4) Activities Exempt: Agricultural activities as defined by 76-2-902, Montana Code Annotated are considered exempt from the provisions of this rule.

### Rule 504 Pavement of Parking Lots Required

(1) For the purpose of this rule, the following definitions apply:

- (a) "Parking lot" means a parcel of land located off the public right-of-way which is primarily used for the temporary storage of motor vehicles.
- (b) "Existing parking lot" means any parking lot which was in existence and in use on January 1, ~~1990~~ 2008.
- (c) "New parking lot" means any parking lot on which construction commenced after January 1, ~~1990~~ 2008.
- (d) "Compliance plan" means an owner-submitted written plan and schedule of implementation to improve an unpaved parking lot by routine application of dust suppressants or other effective measures to control fugitive dust until the parking lot is paved.

(2) Within the Kalispell City-County Air Pollution Control District, no person ~~shall~~ may construct any new parking lot which has a parking area greater than 5000 square feet, ~~or private drive drive-~~ through business lane, ~~or~~ a parking capacity greater ~~that~~ than 15 vehicles, or a traffic volume of more than 50 vehicles per day, unless the parking lot is paved.

(3) Within the Kalispell City-County Air Pollution Control District, no person ~~shall~~ may allow the operation, use, or maintenance of any unpaved existing parking lot which has a parking area greater than 5000 square feet, ~~or private drive drive-~~ through business lane, ~~or~~ a parking capacity greater ~~that~~ than 15 vehicles, or a traffic volume of more than 50 vehicles per day unless a compliance plan has been filed with and approved by the Department. A compliance plan must be filed with the Department within 60 days of written notification that paving is required. The Department may approve the compliance plan as submitted or amend the plan to include any additional reasonable control measures

#### Rule 505 Street Sweeping and Flushing

(1) For the purpose of this rule, the following definitions apply:

(a) "Prioritized street sweeping and flushing" means a schedule of street sweeping and/or flushing under which ~~cleans~~ streets with the highest traffic volumes are cleaned first and proceeds in descending order of traffic volume to streets with the lowest traffic volume. When all ice-free streets have been cleaned, the cycle is immediately repeated. In the event that streets become iced and sanding material is re-applied, the process ~~will~~ must begin with the highest traffic volume streets.

(b) "Reasonably available control technology" (RACT)" means:

(i) ~~During~~ during ~~Winter~~ winter months, prioritized street sweeping and flushing shall commence on the first working day after any streets become either temporarily or permanently ice-free and temperatures are above 32° Fahrenheit, and

(ii) ~~During~~ during summer months, street sweeping and/or flushing shall be accomplished on an as-needed basis with priority given to streets with the highest traffic volume.

(c) "Summer months" means the months of May, June, July, August, September, and October.

(d) "Winter months" means the months of November, December, January, February, March, and April.

(2) Within the Kalispell City-County Air Pollution Control District, no person ~~shall~~ may allow the operation, use, or maintenance of any paved street unless RACT is utilized.

#### Rule 506 Clearing of ~~land~~ Land ~~greater~~ Greater ~~than~~ Than 1/4 ~~acre~~ Acre in size Size

(1) For the purpose of this rule, the following definition applies:

- (a) "Reasonably available control technology" (RACT)" means techniques used to prevent the emission and/or airborne transport of dust and dirt from any disturbed or exposed land including: planting vegetative cover, providing synthetic cover, water and/or chemical stabilization, covering with coarse aggregate, installing wind breaks, or other equivalent ~~method or technique~~ techniques approved by the ~~department~~ Department.
- (2) Within the Kalispell City-County Air Pollution Control District, the owner or operator of any land greater ~~that~~ than 1/4 acre in size that has been cleared or excavated, with the exception of fire breaks approved by the Kalispell Fire Department and the City Council or land cleared solely for agricultural purposes as cited in 76-2-902 MCA, shall employ RACT to control dust emissions within 30 days after notification by the Department that visible emissions were observed leaving the premises or that the premises have remained in an uncontrolled state for over 90 days.
- (3) ~~If it is determined~~ the Department determines that any land cleared poses an immediate threat to human health and welfare, the ~~department~~ Department may order the owner or operator to immediately employ RACT to control the dust emissions.

#### Rule 507 Contingency Plan

- (1) For the purposes of this rule, the following definitions apply:

- (a) "Extraordinary Circumstances" means a specific period of time when the thickness of ice on a road, the air temperature and/or the slope of a road would preclude the effective use of liquid de-icer.
- (b) "Liquid De-icer" means a Departmentally-approved agent which lowers the melting point of ice.
- (c) "Priority Route" means a roadway which must remain in a safe driving condition for emergency or safety purposes. Priority routes ~~will~~ must be designated by the appropriate governing body and submitted to the Control Board.

- (2) Within 60 days of notification by the EPA that the ~~SIP~~ Control Plan for the Kalispell nonattainment area failed to timely attain the PM-10 National Ambient Air Quality Standards or make reasonable further progress the following ~~will~~ must occur:

~~(3)(a)~~ Within within the Kalispell City-County Air Pollution Control District, only liquid de-icer ~~shall~~ may be placed on any road or parking lot with the exception of priority routes ~~with~~ under extraordinary circumstances ~~existing~~. During extraordinary circumstances, priority routes ~~must use sanding~~ may be sanded but only with material which ~~has a durability, as defined by the Montana Modified L.A. Abrasion test of less than or equal to 7 or other testing method which approved by the Control Board deems suitable, of less than or equal to 7 and has a content of material less than 200 mesh, as determined by standard wet sieving methods, which is less than 3.0% oven dry weight, and complies with Rule 501, Section 2.~~

~~(4)(b)~~ The the person applying the liquid de-icer must obtain prior approval from the

Department for the particular de-icer.

Subchapter 6 Columbia Falls City-County Air Pollution Control District

It is the intent of this rule to establish a control plan which will provide protection to the residents of Columbia Falls from air pollution levels in excess of the state and federal ambient air quality PM-10 standards. The provisions of this ~~Sub-chapter~~ Subchapter apply only to the Columbia Falls City-County Air Pollution Control District.

Rule 601 Material To Be Used on Roads and Parking Lots-Standards

(1) For the purpose of this rule, the following definitions apply:

(a) "Parking Lot" means a parcel of land located off of the public right-of-way which is primarily used for the temporary storage of motor vehicles.

(b) "Road" means any road or alley which is greater than 50 feet in length, and has a projected traffic volume greater than 50 vehicles per day.

(2) Within the Columbia Falls City-County Air Pollution Control District, no person ~~shall~~ may place any sanding or chip seal material upon any road or parking lot ~~that which has a durability~~, as defined by the Montana Modified L.A. Abrasion test of greater than or equal to 7 or other testing method which approved by the Control Board deems suitable, of greater than or equal to 7 and has a content of material smaller than 200 mesh, as determined by standard wet sieving methods, which exceeds 3.0% oven dry weight. AASHTO T-210, LA Abrasion Test (ASTM C-131), and ASTM C-131, does not meet the following standards:

- A durability index of greater than or equal to 40
- Abrasion factor not to exceed 20%
- Not more than 3% of the material passing a 200 screen on sieve analysis

The Board may approve other testing methods that in its opinion meet the statutory and regulatory standards and accomplish the purpose of this rule.

(3) ~~It shall be the responsibility of the~~ Prior to application, the person applying the sanding or chip seal material ~~to shall~~ test the material and provide the ~~department~~ Department representative data demonstrating that the material meets the specifications listed in Section (2) prior to application. Such data shall be obtained by gathering a representative sample from the stockpile of the material as it is produced and analyzing the material in accordance with the methods identified in Section (2).

Rule 602 Construction and Demolition Activity

(1) For the purpose of this rule, the following definitions apply:

(a) "Construction/demolition activity" means any on-site mechanical activity preparatory to or related to building, alteration, maintenance, or demolition of an improvement on real property including, but not limited to: grading, excavation, filling, transport and mixing of

material, loading, crushing, cutting, planing, shaping, breaking, sandblasting, or spraying.

(b) "Exempt activity" means any construction/demolition activity consisting of:

~~(i)~~ (i) ~~A~~ a building or improvement with a combined floor space of less than 4000 square feet; ~~;~~ or

(ii) ~~A~~ a disturbed surface area of less than 4000 square feet.

(iii) Agricultural activities as defined by 76-2-902, Montana Code Annotated.

(c) "Reasonably Available Control Technology" (RACT)" means techniques used to prevent the emission and/or the airborne transport of dust and dirt from a construction/demolition site including: application of water or other liquid, limiting access to the site, securing loads, enclosing, shrouding, compacting, stabilizing, planting vegetative cover, cleaning vehicles as they leave the site, scheduling projects for optimum meteorological conditions, or other such measures the ~~department~~ Department may specify to accomplish satisfactory results.

(2) No person ~~shall~~ may engage in any construction/demolition activity, except for exempt activities, without first applying for and obtaining a permit, which describes the project and contains a dust control plan which constitutes RACT, from the ~~department~~ Department.

(3) An application for a construction/demolition permit must be made on a form provided by the ~~department~~ Department. The applicant must provide adequate information to enable the ~~department~~ Department to determine that the application satisfies the requirements for a construction/demolition permit contained in this rule. Proof of publication of public notice, as required in Section (4) of this rule, shall be submitted as part of any application.

(4) The applicant for a construction/demolition permit shall notify the public of ~~it's~~ its application for a permit by means of legal publication in a newspaper of general circulation in the area affected by the application. The notice shall be made not sooner than 10 days prior to submittal of an application and not later than 10 days after submittal of an application. Form of the notice shall be provided by the Department and shall include a statement that public comments may be submitted to the Department concerning the application within 20 days after publication of the notice or filing of the application, whichever is later. It is the responsibility of the applicant to pay all costs associated with publication.

(5) The Department's decision ~~to approve or deny an application for a construction/demolition permit~~ shall be posted at the Department for ~~three~~ 15 working days. ~~The Department's decision may be reviewed by the board in accordance with the following provisions:~~

~~(a) (6)~~ A person ~~who has submitted written comments and~~ who is adversely affected by the Department's final decision may request a hearing before the Control Board within the 15 ~~3~~ working days after the Department's ~~final~~ decision. The request must be made in writing. The request for hearing must state specific grounds why the permit should be issued, why the permit should not be issued or why it should be issued with particular conditions and why the complainant is adversely affected. ~~The Control Officer shall determine, within 10 days, if a hearing need be held by the~~

~~Control Board. If the Control Officer determines no hearing need be held, the decision of the Department is affirmed, and said officer shall notify the complainant of the action.~~ The Control Board ~~may~~ shall conduct a hearing within 30 days after receipt of such request upon due notice to the applicant and to the public. Within 10 days following the hearing the Control Board shall instruct the Department to issue, issue with conditions, or deny the construction/demolition permit.

~~(b) (7)~~ The filing of a request for a hearing postpones the effective date of the ~~department's~~ Department's decision until the conclusion of the hearing and the issuance of the final decision by the Control Board.

~~(6) (8)~~ The Department shall deny an application for a construction/demolition permit unless:

(a) ~~in the opinion of the department, the Department determines that~~ RACT is will be employed; and

(b) prior written approval has been ~~obtain~~ obtained from the Columbia Falls Building Department.

#### Rule 603 Pavement of Roads Required

(1) For the purpose of this rule, the following definitions apply:

(a) "Compliance plan" means an owner-submitted written plan and schedule of implementation to improve an unpaved road by routine application of dust suppressants; or other effective measure to control fugitive dust until the road is paved.

(b) "Existing street or road" means any street, road, or alley which is greater than 50 feet in length, has an average traffic volume greater than 200 vehicles per day, and was in existence on January 1, ~~1991~~ 2008.

(c) "New street or road" means any street, road, or alley which is greater than 50 feet in length, has a projected average traffic volume greater than 50 vehicles per day, and on which construction commenced or will commence after January 1, ~~1991~~ 2008.

(2) Within the Columbia Falls City-County Air Pollution Control District, no person ~~shall~~ may allow the construction of a new street or road unless it is paved.

(3) Within the Columbia Falls City-County Air Pollution Control District, no person ~~shall~~ may allow the operation, use, or maintenance of any unpaved existing street or road unless a compliance plan has been filed with and approved by the Department. A compliance plan must be filed with the Department within 60 days of written notification that paving is required. The Department may approve a compliance plan as submitted or amend the plan to include any additional reasonable dust control measures.

(4) Activities Exempt: Agricultural activities as defined by 76-2-902, Montana Code Annotated are considered exempt from the provisions of this rule.

#### Rule 604 Pavement of Parking Lots Required

(1) For the purpose of this rule, the following definitions apply:

(a) "Parking lot" means a parcel of land located off the public right-of-way which is primarily used for the temporary storage of motor vehicles.

(b) "Existing parking lot" means any parking lot which was in existence and in use on January 1, ~~1994~~ 2008.

(c) "New parking lot" means any parking lot on which construction commenced after January 1, ~~1994~~ 2008.

(d) "Compliance plan" means an owner-submitted written plan and schedule of implementation to improve an unpaved parking lot by routine application of dust suppressants or other effective measures to control fugitive dust until the parking lot is paved.

(2) Within the Columbia Falls City-County Air Pollution Control District, no person ~~shall~~ may construct any new parking lot which has a parking area greater than 5000 square feet, ~~or~~ private ~~drive~~ drive-through business lane, ~~or~~ a parking capacity greater ~~that~~ than 15 vehicles or a traffic volume of more than 50 vehicles per day; unless the parking lot is paved.

(3) Within the Columbia Falls City-County Air Pollution Control District, no person ~~shall~~ may allow the operation, use, or maintenance of any unpaved existing parking lot which has a parking area greater than 5000 square feet, ~~or~~ private ~~drive~~ drive-through business lane, ~~or~~ a parking capacity greater ~~that~~ than 15 vehicles, or a traffic volume of more than 50 vehicles per day unless a compliance plan has been filed with and approved by the Department. A compliance plan must be filed with the Department within 60 days of written notification that paving is required. The Department may approve the compliance plan as submitted or amend the plan to include any additional reasonable control measures.

#### Rule 605 Street Sweeping and Flushing

(1) For the purpose of this rule, the following definitions apply:

(a) "Prioritized street sweeping and flushing" means a schedule of street sweeping and/or flushing under which ~~cleans~~ streets with the highest traffic volumes are cleaned first and proceeds in descending order of traffic volume to streets with the lowest traffic volume. When all ice-free streets have been cleaned, the cycle is immediately repeated. In the event that streets become iced and sanding material is re-applied, the process ~~will~~ must begin with the highest traffic volume streets.

(b) "Reasonably available control technology" (RACT) means:

~~(H)(i)~~ (i) ~~During~~ during ~~Winter~~ winter months, prioritized street sweeping and flushing shall commence on the first working day after any streets become either temporarily or permanently ice-free and temperatures are above 32° Fahrenheit; ~~and~~

(ii) ~~During~~ during summer months, street sweeping and/or flushing shall be accomplished on an as-needed basis with priority given to streets with the highest traffic volume.

(c) "Summer months" means the months of May, June, July, August, September, and October.

(d) "Winter months" means the months of November, December, January, February, March, and April.

(2) Within the Columbia Falls City-County Air Pollution Control District, no person ~~shall~~ may allow the operation, use, or maintenance of any paved street unless RACT is utilized.

Rule 606 Clearing of ~~land~~ Land ~~greater~~ Greater ~~than~~ Than 1/4 ~~acre~~ Acre in ~~size~~ Size

(1) For the purpose of this rule, the following definition applies:

(a) "Reasonably available control technology" (RACT)" means techniques used to prevent the emission and/or airborne transport of dust and dirt from any disturbed or exposed land including: planting vegetative cover, providing synthetic cover, water and/or chemical stabilization, covering with coarse aggregate, installing wind breaks or other equivalent ~~method or technique~~ techniques approved by the ~~department~~ Department.

(2) Within the Columbia Falls City-County Air Pollution Control District, the owner or operator of any land greater ~~that~~ than 1/4 acre in size that has been cleared or excavated, with the exception of fire breaks approved by the Columbia Falls Fire Department and the City Council or land cleared solely for agricultural purposes as cited in 76-2-902 MCA, shall employ RACT to control dust emissions within 30 days after notification by the Department that visible emissions were observed leaving the premises or that the premises have remained in an uncontrolled state for over 90 days.

(3) If ~~it is determined~~ the Department determines that any land cleared poses an immediate threat to human health and welfare, the ~~department~~ Department may order the owner or operator to immediately employ RACT to control the dust emissions.

Rule 607 Contingency Plan

(1) For the purposes of this rule, the following definitions apply:

(a) "Extraordinary Circumstances" means a specific period of time when the thickness of ice on a road, the air temperature, and/or the slope of a road would preclude the effective use of liquid de-icer.

(b) "Liquid De-icer" means a Departmentally-approved agent which lowers the melting point of ice.

(c) "Priority Route" means a roadway which must remain in a safe driving condition for emergency or safety purposes. Priority routes ~~will~~ must be designated by the appropriate governing body and submitted to the Control Board.

(2) Within 60 days of notification by the EPA that the SIP Control Plan for the Columbia Falls nonattainment area failed to timely attain the PM-10 National Ambient Air Quality Standards or make reasonable further progress the following ~~will~~ must occur:

~~(3) (a) Within~~ within the Columbia Falls City-County Air Pollution Control District, only liquid de-icer ~~shall~~ may be placed on any road or parking lot with the exception of priority routes ~~with~~ under extraordinary circumstances ~~existing~~. During extraordinary events, priority routes ~~must use sanding~~ may be sanded with material which ~~has a durability, as defined by the Montana Modified L.A. Abrasion test of less than or equal to 7 or other testing method which approved by the Control Board deems suitable, of less than or equal to 7 and has a content of material less than 200 mesh, as determined by standard wet sieving methods, which is less than 3.0% oven dry weight; and complies with Rule 601, Section 2.~~

~~(4)(b) The~~ the person applying the liquid de-icer must obtain prior approval from the Department for the particular de-icer.

#### Subchapter 7 Whitefish City - County Air Pollution Control District

It is the intent of this rule to establish a control plan which will provide protection to the residents of the City of Whitefish from air pollution levels in excess of the state and federal ambient air quality PM-10 standards. The provisions of this ~~Sub-chapter~~ Subchapter apply only to the Whitefish City-County Air Pollution Control District.

#### Rule 701 Material To Be Used on Roads and Parking Lots-Standards

(1) For the purpose of this rule, the following definitions apply:

(a) "Parking Lot" means a parcel of land located off of the public right-of-way not less than 5000 square feet in size which is primarily used for the temporary storage of motor vehicles.

(b) "Road" means any road, street, or alley which is greater than 50 feet in length, and has a projected traffic volume greater than 50 vehicles per day.

(2) Within the Whitefish City-County Air Pollution Control District, no person ~~shall~~ may place any sanding or chip seal material upon any road or parking lot ~~that which has a durability, as defined by the Montana Modified L.A. Abrasion test of greater than or equal to 7 or other testing method which approved by the Control Board deems suitable, of greater than or equal to 7 and has a content of material smaller than 200 mesh, as determined by standard wet sieving methods, which exceeds 3.0% oven dry weight.~~ AASHTO T-210, LA Abrasion Test (ASTM C-131), and ASTM C-131, does not meet the following standards:

- A durability index of greater than or equal to 40
- Abrasion factor not to exceed 20%
- Not more than 3% of the material passing a 200 screen on sieve analysis

The Board may approve other testing methods that in its opinion meet the statutory and regulatory

standards and accomplish the purpose of this rule.

(3) ~~It shall be the responsibility of the~~ Prior to application, the person applying the sanding or chip seal material ~~to shall~~ test the material and provide the ~~department~~ Department representative data demonstrating that the material meets the specifications listed in Section (2) prior to application. Such data shall be obtained by gathering a representative sample from the stockpile of the material as it is produced and analyzing the material in accordance with the methods identified in Section (2)

#### Rule 702 Construction and Demolition Activity

(1) For the purpose of this rule, the following definitions apply:

(a) "Construction/demolition activity" means any on-site mechanical activity preparatory to or related to building, alteration, maintenance, or demolition of an improvement on real property including, but not limited to: grading, excavation, filling, transport and mixing of material, loading, crushing, cutting, planing, shaping, breaking, sandblasting, or spraying.

(b) "Exempt activity" means any construction/demolition activity consisting of:

~~(i)~~ (i) A a building or improvement with a combined floor space of less than 4000 square feet; or

(ii) A a disturbed surface area of less than 4000 square feet.

(iii) Agricultural activities as defined by 76-2-902, Montana Code Annotated.

(c) "Reasonably Available Control Technology" (RACT)" means techniques used to prevent the emission and/or the airborne transport of dust and dirt from a construction/demolition site including: application of water or other liquid, limiting access to the site, securing loads, enclosing, shrouding, compacting, stabilizing, planting vegetative cover, cleaning vehicles as they leave the site, scheduling projects for optimum meteorological conditions, or other such measures the ~~department~~ Department may specify to accomplish satisfactory results.

(2) No person ~~shall~~ may engage in any construction/demolition activity, except for exempt activities, without first applying for and obtaining a permit, which describes the project and contains a dust control plan which constitutes RACT, from the ~~department~~ Department.

(3) An application for a construction/demolition permit must be made on a form provided by the ~~department~~ Department. The applicant must provide adequate information to enable the ~~department~~ Department to determine that the application satisfies the requirements for a construction/demolition permit contained in this rule. Proof of publication of public notice, as required in Section (4) of this rule, shall be submitted as part of any application.

(4) The applicant for a construction/demolition permit shall notify the public of ~~it's~~ its application for a permit by means of legal publication in a newspaper of general circulation in the area affected by the application. The notice shall be made not sooner than 10 days prior to submittal of an application and not later than 10 days after submittal of an application. Form of the notice shall be

provided by the Department and shall include a statement that public comments may be submitted to the Department concerning the application within 20 days after publication of the notice or filing of the application, whichever is later. It is the responsibility of the applicant to pay all costs associated with publication.

(5) The Department's decision ~~to approve or deny an application for a construction/demolition permit~~ shall be posted at the Department for ~~three~~ 15 working days. ~~The Department's decision may be reviewed by the board in accordance with the following provisions:~~

~~(a) (6)~~ A person ~~who has submitted written comments and~~ who is adversely affected by the Department's final decision may request a hearing before the Control Board within ~~the 7~~ 15 working days after the Department's ~~final~~ decision. The request must be made in writing. The request for hearing must state specific grounds why the permit should be issued, why the permit should not be issued or why it should be issued with particular conditions and why the complainant is adversely affected. ~~The Control Officer shall determine, within 10 days, if a hearing need be held by the Control Board. If the Control Officer determines no hearing need be held, the decision of the Department is affirmed, and said officer shall notify the complainant of the action.~~ The Control Board ~~may~~ shall conduct a hearing within 30 days after receipt of such request upon due notice to the applicant and to the public. Within 10 days following the hearing the Control Board shall instruct the Department to issue, issue with conditions, or deny the construction/demolition permit.

~~(b) (7)~~ The filing of a request for a hearing postpones the effective date of the ~~department's~~ Department's decision until the conclusion of the hearing and the issuance of the final decision by the Control Board.

~~(6) (8)~~ The Department shall deny an application for a construction/demolition permit unless:

(a) ~~in the opinion of the department, the Department determines that RACT is~~ will be employed; ~~and~~

(b) prior written approval ~~had~~ has been obtained from the Whitefish Building Department.

#### Rule 703 Pavement of Roads Required

(1) For the purpose of this rule, the following definitions apply:

(a) "Compliance plan" means ~~an~~ owner-submitted written plan and schedule of implementation to improve an unpaved road by routine application of dust suppressants; or other effective ~~measure~~ measures to control fugitive dust until the road is paved.

(b) "Existing street or road" means any street, road, or alley which is greater than 50 feet in length, has an average traffic volume greater than 200 vehicles per day, and was in existence on January 1, ~~1995~~ 2008.

(c) "New street or road" means any street, road, or alley which is greater than 50 feet in length, has a projected average traffic volume greater than 50 vehicles per day, and on which construction commenced or will commence after January 1, ~~1995~~ 2008.

(d) "Pavement", also referred to as paved or surfaced, means a dust prohibitive surface of asphalt, concrete, or portland cement concrete material constructed per standards ~~establishe~~established by the City Engineer in accordance with Montana Public Works Standards. ~~Variations from the City Engineer standards may be allowed if plans are prepared, and sealed, and construction is supervised by a Licensed Professional Engineer for the area to be paved.~~

(2) Within the Whitefish City-County Air Pollution Control District, no person ~~shall~~ may allow the construction of a new street or road unless it is paved.

(3) Within the Whitefish City-County Air Pollution Control District, no person ~~shall~~ may allow the operation, use, or maintenance of any unpaved existing street or road unless a compliance plan has been filed with and approved by the Department. A compliance plan must be filed with the Department within 60 days of written notification that paving is required. The Department may approve a compliance plan as submitted or amend the plan to include any additional reasonable dust control measures.

(4) Activities Exempt: Agricultural activities as defined by 76-2-902, Montana Code Annotated are considered exempt from the provisions of this rule.

#### Rule 704 Pavement of Parking Lots Required

(1) For the purpose of this rule, the following definitions apply:

(a) "Parking lot" means a parcel of land located off the public right-of-way which is primarily used for the temporary storage of motor vehicles.

(b) "Existing parking lot" means any parking lot which was in existence and in use on January 1, ~~1995~~ 2008.

(c) "New parking lot" means any parking lot on which construction commenced after January 1, ~~1995~~ 2008.

(d) "Pavement", also referred to as paved or surfaced, means a dust prohibitive surface of asphalt, concrete, or portland cement concrete material constructed per standards ~~establishe~~established by the City Engineer in accordance with the Montana Public Works Standards. ~~Variations from the City Engineer standards may be allowed if plans are prepared, and sealed, and construction is supervised by a Licensed Professional Engineer for the area to be paved.~~

(e) "Compliance plan" means an owner-submitted written plan and schedule of implementation to improve an unpaved parking lot by routine application of dust suppressants or other effective measures to control fugitive dust until the parking lot is paved.

(2) Within the Whitefish City-County Air Pollution Control District, no person ~~shall~~ may construct any new parking lot which has a parking area greater than 5000 square feet, ~~or private drive drive-~~ through business lane, ~~or~~ a parking capacity greater ~~that~~ than 15 vehicles, or a traffic volume of

more than 50 vehicles per day, unless the parking lot is paved.

(3) Within the Whitefish City-County Air Pollution Control District, no person ~~shall~~ may allow the operation, use, or maintenance of any unpaved existing parking lot which has a parking area greater than 5000 square feet, ~~or private drive~~ drive-through business lane, ~~or~~ a parking capacity greater ~~that~~ than 15 vehicles, or a traffic volume of more than 50 vehicles per day unless a compliance plan has been filed with and approved by the Department. A compliance plan must be filed with the Department within 60 days of written notification that paving is required. The Department may approve the compliance plan as submitted or amend the plan to include any additional reasonable control measures.

#### Rule 705 Street Sweeping and Flushing

(1) For the purpose of this rule, the following definitions apply:

(a) "Prioritized street sweeping and flushing" means a schedule of street sweeping and/or flushing under which ~~cleans~~ streets with the highest traffic volumes are cleaned first and proceeds in descending order of traffic volume to streets with the lowest traffic volume. When all ice-free streets have been cleaned, the cycle is immediately repeated. In the event that streets become iced and sanding material is re-applied, the process ~~will~~ must begin with the highest traffic volume streets.

(b) "Reasonably available control technology" means:

~~(i)~~ (i) ~~During~~ during ~~Winter~~ winter months, prioritized street sweeping and flushing shall commence on the first working day after any streets become either temporarily or permanently ice-free and temperatures are expected to remain above 35 ° F for a 24 hour period; ~~and~~

(ii) ~~During~~ during summer months, street sweeping and/or flushing shall be accomplished on an as-needed basis with priority given to streets with the highest traffic volume.

(c) "Summer months" means the months of May, June, July, August, September, and October.

(d) "Winter months" means the months of November, December, January, February, March, and April.

(2) Within the Whitefish City-County Air Pollution Control District, no person ~~shall~~ may allow the operation, use, or maintenance of any paved street unless RACT is utilized.

#### Rule 706 Clearing of ~~land~~ Land ~~greater~~ Greater ~~than~~ Than 1/4 ~~acre~~ Acre in size Size

(1) For the purpose of this rule, the following definition applies:

(a) "Reasonably available control technology" (RACT)" means techniques used to prevent the emission and/or airborne transport of dust and dirt from any disturbed or exposed land

including: planting vegetative cover, providing synthetic cover, water and/or chemical stabilization, covering with coarse aggregate, installing wind breaks, or other equivalent ~~method or technique~~ techniques approved by the ~~department~~ Department.

(2) Within the Whitefish City-County Air Pollution Control District, the owner or operator of any land greater ~~that~~ than 1/4 acre in size that has been cleared or excavated, with the exception of fire breaks approved by the Whitefish Fire Department and the City Council or land cleared solely for agricultural purposes as cited in 76-2-902 MCA, shall employ RACT to control dust emissions within 30 days after notification by the Department that visible emissions were observed leaving the premises or that the premises have remained in an uncontrolled state for over 90 days.

(3) If ~~it is determined~~ the Department determines that any land cleared poses an immediate threat to human health and welfare, the ~~department~~ Department may order the owner or operator to immediately employ RACT to control the dust emissions.

#### Rule 707 Contingency Plan

(1) For the purposes of this rule, the following definitions apply:

(a) "Extraordinary Circumstances" means a specific period of time when the thickness of ice on a road, the air temperature and/or the slope of a road would preclude the effective use of liquid de-icer.

(b) "De-icing Agent" means a Departmentally-approved agent which lowers the melting point of ice.

(c) "Priority Route" means a roadway which must remain in a safe driving condition for emergency or safety purposes. Priority routes ~~will~~ must be designated by the appropriate governing body and submitted to the Control Board.

(2) Within 60 days of notification by the EPA that the ~~SIP~~ Control Plan for the Whitefish non-attainment area failed to timely attain the PM-10 National Ambient Air Quality Standards or make reasonable further progress the following ~~will~~ must occur:

~~(3)(a)~~ Within within the Whitefish City-County Air Pollution Control District, only de-icing agents ~~shall~~ may be placed on any road or parking lot with the exception of priority routes ~~with~~ under extraordinary circumstances ~~existing~~. During extraordinary circumstances, priority routes ~~must use~~ may be used with sanding material which ~~has a durability, as defined by the Montana Modified L.A. Abrasion test of less than or equal to 9 or other testing method which approved by the Control Board deems suitable, of less than or equal to 9 and has a content of material less than 200 mesh, as determined by standard wet sieving methods, which is less than 4.0% oven dry weight.; and complies with Rule 701, Section 2.~~

~~(4)(b)~~ The the person applying the de-icing agent must obtain prior approval from the Department for the particular de-icer.

#### Chapter IX. ENFORCEMENT, JUDICIAL REVIEW, AND HEARINGS

(1) Notice of Violation. Whenever the Department determines that there are reasonable grounds to believe that a violation of any provision of this ~~program~~ Program or condition or limitation imposed by a permit issued by the Department has occurred, the Department may issue a written ~~notice~~ Notice of Violation to be served personally or by registered or certified mail on the alleged violator or their agent. This ~~notice~~ Notice of Violation shall specify the provision of the program or permit condition alleged to have been violated and the facts alleged to constitute the violation.

(2) The ~~notice~~ Notice of Violation may ~~include~~:

- (a) include an ~~order~~ Order to take necessary corrective action within a reasonable period of time specified in the order.
- (b) require the production of information and records;
- (c) may prescribe the date by which the violation must cease; and
- (d) may prescribe time limits for particular actions in preventing, abating, or controlling the emissions.

(3) Hearing-

- (a) The ~~order~~ Order becomes final unless, within ~~30~~ 20 days after the ~~notice~~ Notice of Violation and ~~order~~ Order is received, the person named requests in writing a hearing before the Control Board. ~~Upon receipt of the request, the Board shall schedule a hearing to be held at the next regular meeting. Each hearing shall be recorded and the record maintained for a period of 5 years.~~
- (b) The Control Board shall conduct a hearing within sixty (60) days after receipt of a written request and shall notify the alleged violator of that hearing.
- (c) The Control Board may and on application by a party shall compel the attendance of witnesses and the production of evidence on behalf of the parties.
- (d) Hearings under this Chapter must proceed in the following order:
  - (i) first, the Department shall present a staff report, if any;
  - (ii) second, the person who requested the hearing shall present relevant evidence to the Board; and
  - (iii) third, the Board shall hear any person in support of or in opposition to the issue being heard and shall accept any related letters, documents or materials.

(4) If, after a hearing held under section ~~(4)~~(3) of this Chapter, the Control Board finds that the violations have occurred, it shall either affirm or modify the previously issued ~~order~~ Order or issue an appropriate ~~order~~ Order for the prevention, abatement, or control of the emissions involved, or for the taking of other corrective action it considers appropriate. An order issued as part of a ~~notice~~ Notice of Violation or after a hearing may prescribe the date by which the violation shall cease and may prescribe time limits for particular action in preventing, abating, or controlling the emissions. If, after hearing on a ~~an order~~ Order contained in a ~~notice~~ Notice of Violation, the Control Board finds

that no violation has occurred, it shall rescind the ~~order~~ Order.

(5) The Control Board may require alleged violators of this Program to appear before the Control Board for a hearing at a time and place specified in a notice of hearing.

(6) Other Remedies. Action under this Chapter does not bar enforcement of this Program by injunction, seeking penalties or other appropriate remedy.

(7) Rehearing. A person aggrieved by an order of the Control Board may apply for rehearing upon one or more of the following grounds and upon no other grounds:

(a) ~~The~~ the Control Board acted without or in excess of its powers;

(b) ~~The~~ the ~~order~~ Order was procured by fraud;

(c) competent evidence was excluded to the prejudice of the applicant; or

~~(e)~~ (d) ~~The~~ the applicant has discovered new material evidence, ~~material~~ which could not with reasonable diligence have been discovered and produced at the hearing.

(8) Judicial Review

(a) Within 30 days after the final Order of the Board, or within 30 days after the application for rehearing is denied, or if the application is granted, within 30 days after the decision on the rehearing, a party aggrieved thereby may appeal to the district court of the judicial district which is the situs of the property affected by the order Eleventh Judicial District Court.

(b) The appeal shall be taken by serving a written notice of appeal upon the chair of the Control Board, which service shall be made by the delivery of a copy of the notice to the chair and by filing the original with the Clerk of Court of the Eleventh Judicial District. Immediately after service upon the Control Board, the Control Board shall certify to the District Court the entire record and proceedings, including all testimony and evidence taken by the Control Board. Immediately upon receiving the certified record, the District Court shall fix dates for filing of briefs and hearing arguments on the cause and shall cause a notice of the same to be served upon the Control Board and the appellant.

(c) The Court shall hear the appeal in accordance with Title 2, Chapter 4, MCA.

## Chapter X. CIVIL PENALTIES

(1) Any person who violates any provision, rule, permit ~~with the exception of the voluntary solid-fuel burning device rule~~, or order under this program, after notice thereof has been given by the Department shall be subject to a civil penalty not to exceed ~~five hundred dollars (\$500)~~ one thousand dollars (\$1000) per violation. Each day of violation shall constitute a separate violation. ~~The department may institute and maintain any enforcement proceedings hereunder.~~ Upon request of the Department the county attorney shall petition the court to impose, assess, and recover the civil penalty.

(2) Monies collected hereunder shall be deposited in a special fund for the purpose of administering these regulations.

(1) General Provisions

(a) Action under this Chapter is not a bar to enforcement of this Program, regulations, permits or orders made pursuant thereto, by injunction or other appropriate remedy. The Control Board or the ~~department~~ Department may institute and maintain in the name of the county ~~or the state~~ any and all enforcement proceedings.

**New Chapter XI CRIMINAL PENALTIES**

(1) Any person who purposely or knowingly violates a provision, regulation, or rule of Chapter VIII Sub-Chapter 2 – Open Burning - enforced under this Program, or an order made pursuant to this Program, is guilty of an offense and upon conviction subject to a fine not to exceed one thousand dollars (\$1,000.00). Each day of the violation constitutes a separate offense.

(2) An action under this Chapter is not a bar to enforcement of this Program or of a rule, order, or permit made or issued under it by injunction or other appropriate civil or administrative remedy.

Chapter ~~XI~~ XII SEVERABILITY CLAUSE

If any ~~section or part thereof~~ of this ~~program~~ Program ~~be is~~ declared invalid by a court of competent jurisdiction, such decision shall not affect the remainder of the ~~act or any part thereunder~~ Program.

Chapter ~~XII~~ XIII AMENDMENTS AND REVISIONS

The Flathead Board of County Commissioners and participating municipalities may enact any amendments ~~or revisions~~ of this program which have been approved by the Control Board ~~on~~ after public hearing upon due notice. Due notice shall be given by public advertisement once a week for at least two weeks before the public hearing in a weekly or daily newspaper published in Flathead County. Any amendments are effective upon approval by the Montana Board of Environmental Review, pursuant to Section 765-2-301, MCA.